

**Federal Communications Commission**

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Wolf Creek Broadcasting, LLC	)	File No.: EB-FIELDWR-14-00012994
Licensee of Station KWUF-FM	)	
	)	NOV No.: V201432800027
Pagosa Springs, CO	)	
	)	Facility ID: 51286

**NOTICE OF VIOLATION**

**Released:** April 10, 2014

By the District Director, Denver Office, Western Region, Enforcement Bureau:

1. This is a Notice of Violation (Notice) issued pursuant to Section 1.89 of the Commission’s rules (Rules)<sup>1</sup> to Wolf Creek Broadcasting, LLC (WCBL), licensee of radio station KWUF-FM serving Pagosa Springs, CO. Pursuant to Section 1.89(a) of the Rules, issuance of this Notice does not preclude the Enforcement Bureau from further action if warranted, including issuing a Notice of Apparent Liability for Forfeiture for the violations noted herein.<sup>2</sup>

2. On December 13, 2013, an agent of the Enforcement Bureau’s Denver Office inspected radio station KWUF-FM located at 702 South 10<sup>th</sup> Street, Pagosa Springs, CO, and observed the following violations:

- a. 47 C.F.R. § 11.35(a): “EAS Participants are responsible for ensuring that EAS Encoders, EAS Decoders, Attention Signal generating and receiving equipment, and Intermediate Devices used as part of the EAS to decode and/or encode messages formatted in the EAS Protocol and/or the Common Alerting Protocol are installed so that the monitoring and transmitting functions are available during the times the stations and systems are in operation. Additionally, EAS Participants must determine the cause of any failure to receive the required tests or activations specified in §11.61(a)(1) and (2). Appropriate entries indicating reasons why any tests were not received must be made in the broadcast station log as specified in §§73.1820 and 73.1840 of this chapter for all broadcast streams and cable system records as specified in §§76.1700, 76.1708, and 76.1711 of this chapter. All other EAS Participants must also keep records indicating reasons why any tests were not received and these records must be retained for two years,

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<sup>1</sup> 47 C.F.R. § 1.89.

<sup>2</sup> 47 C.F.R. § 1.89(a).

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maintained at the EAS Participant's headquarters, and made available for public inspection upon reasonable request.” The agent reviewed EAS logs for the period September 1 through December 13, 2013, and observed that KWUF-FM did not receive or transmit a required monthly test and that the station received only one required weekly test from another broadcast station. The station manager informed the agent that the monitoring antennas were damaged from lightning and extreme wind. There were no logs or records to suggest that the EAS deficiencies were noticed or addressed.

- b. 47 C.F.R. § 11.52(d)(1): “EAS Participants must monitor two EAS sources. The monitoring assignments of each broadcast station and cable system and wireless cable system are specified in the State EAS Plan and FCC Mapbook. They are developed in accordance with FCC monitoring priorities.” The Colorado State Plan for EAS requires that stations in Local Area 9 (Mesa Verde) monitor KRSJ on 100.5 MHz and KIQX on 101.3 MHz. The agent analyzed the EAS logs for the period September 1 through December 13, 2013, finding that KWUF (FM) received one EAS test from KUTE (FM), however no tests were received from either of its required monitoring assignments.
- c. 47 C.F.R. § 11.61(a)(1)(i): “Tests in odd numbered months shall occur between 8:30 a.m. and local sunset. Tests in even numbered months shall occur between local sunset and 8:30 a.m. They will originate from Local or State Primary sources. The time and script content will be developed by State Emergency Communications Committees in cooperation with affected EAS Participants. Script content may be in the primary language of the EAS Participant. These monthly tests must be transmitted within 60 minutes of receipt by EAS Participants in an EAS Local Area or State. Analog and digital class D non-commercial educational FM, analog and digital LPFM stations, and analog and digital LPTV stations are required to transmit only the test script.” The agent examined EAS logs for the period September 1 through December 13, 2013, and observed that the station did not receive or transmit a required monthly test.
- d. 47 C.F.R. § 11.61(b): “Entries shall be made in EAS Participant records, as specified in §11.35(a) and 11.54(a)(3).” The agent examined EAS logs covering the period of September 1 through December 13, 2013. As mentioned above, station records failed to indicate that the EAS deficiencies were noticed or addressed.

3. As the nation’s emergency warning system, the Emergency Alert System is critical to public safety, and we recognize the vital role that broadcasters play in ensuring its success. The Commission takes seriously any violations of the Rules implementing the EAS and expects full compliance from its regulatees.

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4. Pursuant to Section 308(b) of the Communications Act of 1934, as amended,<sup>3</sup> and Section 1.89 of the Rules, we seek additional information concerning the violations and any remedial actions taken. Therefore, WCBL must submit a written statement concerning this matter within twenty (20) days of release of this Notice. The response (i) must fully explain each violation, including all relevant surrounding facts and circumstances, (ii) must contain a statement of the specific action(s) taken to correct each violation and preclude recurrence, and (iii) must include a time line for completion of any pending corrective action(s). The response must be complete in itself and must not be abbreviated by reference to other communications or answers to other notices.<sup>4</sup>

5. In accordance with Section 1.16 of the Rules, we direct WCBL to support its response to this Notice with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of WCBL with personal knowledge of the representations provided in WCBL's response, verifying the truth and accuracy of the information therein,<sup>5</sup> and confirming that all of the information requested by this Notice which is in the licensee's possession, custody, control, or knowledge has been produced. To knowingly and willfully make any false statement or conceal any material fact in reply to this Notice is punishable by fine or imprisonment under Title 18 of the U.S. Code.<sup>6</sup>

6. All replies and documentation sent in response to this Notice should be marked with the File No. and NOV No. specified above, and mailed to the following address:

Federal Communications Commission  
Denver Office  
P.O. Box 25446  
One Denver Federal Center – Building 1A  
Lakewood, CO 80225-0446

7. This Notice shall be sent to Wolf Creek Broadcasting, LLC, at its address of record.

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<sup>3</sup> 47 U.S.C. § 308(b).

<sup>4</sup> 47 C.F.R. § 1.89(c).

<sup>5</sup> Section 1.16 of the Rules provides that “[a]ny document to be filed with the Federal Communications Commission and which is required by any law, rule or other regulation of the United States to be supported, evidenced, established or proved by a written sworn declaration, verification, certificate, statement, oath or affidavit by the person making the same, may be supported, evidenced, established or proved by the unsworn declaration, certification, verification, or statement in writing of such person . . . . Such declaration shall be subscribed by the declarant as true under penalty of perjury, and dated, in substantially the following form . . . : ‘I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)’.” 47 C.F.R. § 1.16.

<sup>6</sup> 18 U.S.C. § 1001 *et seq.* See also 47 C.F.R. § 1.17.

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8. The Privacy Act of 1974<sup>7</sup> requires that we advise you that the Commission will use all relevant material information before it, including any information disclosed in your reply, to determine what, if any, enforcement action is required to ensure compliance.

FEDERAL COMMUNICATIONS COMMISSION

Nikki P. Shears  
District Director  
Denver Office  
Western Region  
Enforcement Bureau

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<sup>7</sup> P.L. 93-579, 5 U.S.C. § 552a(e)(3).